



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Sign Permit Denial to Roddy's  
Signs, Inc., d/b/a American Signs and Designs

Case No.: TR-00-0042

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**FINAL DECISION**

Roddy's Signs, Inc., d/b/a American Signs and Designs, submitted an application for a permit to erect and maintain an outdoor advertising sign to the Department of Transportation. By letter dated May 3, 2000, the Department of Transportation denied the application. By letter dated May 4, 2000, Roderick Dull, owner of Roddy's Signs, Inc., requested a hearing pursuant to § 84.30(18), Stats., to review the denial. On October 17, 2000, the Department of Transportation referred the matter to the Division of Hearings and Appeals for hearing. Pursuant to due notice a hearing was conducted on December 4, 2000, in Madison, Wisconsin, before Mark J. Kaiser, Administrative Law Judge (the ALJ).

In accordance with §§ 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Roddy's Signs, Inc., d/b/a American Signs and Designs, by

Roderick Dull  
P. O. Box 85  
Boscobel, WI 53805

Wisconsin Department of Transportation, by

Attorney John J. Sobotik  
P. O. Box 7910  
Madison, WI 53707-7910

The Administrative Law Judge issued a Proposed Decision on December 19, 2000. The Department of Transportation filed comments objecting to the Proposed Decision on January 4, 2001. The Department objects to the finding in the Proposed Decision that the Hillside Greenhouse business does not fall within the exceptions set forth at §84.30(2)(d), Stats. The Proposed Decision found that the Hillside Greenhouse was a more significant commercial activity than the activities listed at §84.30(2)(d), Stats. However, based on the definition of "agriculture" found in Webster's Dictionary the Hillside Greenhouse would be considered an agricultural activity. Accordingly, the Findings of Fact in the Proposed Decision are modified to indicate that the existence of the Hillside Greenhouse does not qualify the area for the proposed

sign as an unzoned commercial area and the Proposed Order is reversed to affirm the Department of Transportation's denial of Roddy's Signs, Inc.'s application for a permit to erect and maintain an outdoor advertising sign.

## FINDINGS OF FACT

The Administrator finds:

1. By application filed with the Department of Transportation (Department) on April 18, 2000, Roddy's Signs, Inc., d/b/a American Signs and Designs (Roddy's Signs) applied for a permit pursuant to § 84.30, Stats., to erect and maintain an off-premise outdoor advertising sign (Ex. 1). The application seeks a permit to install a sign in the Town of Marion, Grant County, Wisconsin, along United States Highway 61 (USH 61), approximately half a mile south of Stenner Road. The area the proposed sign will be located in is unzoned. USH 61 is a federal aid primary highway (now termed the national highway system).

2. The property on which the proposed sign will be located includes a former bodyshop that has been converted into multi-family residential housing and a greenhouse business. The greenhouse business is named Hillside Greenhouse. Hillside Greenhouse occupies a permanent greenhouse structure in which it grows and sells to the public various greenhouse products. According to its business card and the testimony of Roderick Dull, Hillside Greenhouse sells fresh-cut roses, houseplants, and bedding plants. Hillside Greenhouse has a permanent on-premise sign containing the message "Hillside Flowers and Greenhouse—375-4202—Open 9-5."

3. By letter dated May 3, 2000, the Department denied Roddy's Signs' application for the proposed sign permit (Ex. 3). According to the denial letter, the reason for the denial was:

The Town of Marion is not zoned. Wisconsin Statutes 84.30(2)(k) describes areas that are unzoned for purposes of outdoor advertising. A greenhouse is not a recognized activity for these purposes. If the land were zoned[,] a greenhouse would be issued a conditional use [permit] as part of agriculture [zoning] per Grant County zoning administrator.

4. Pursuant to § 84.30(3)(e), Stats., an outdoor advertising sign may be erected and maintained in a business area adjacent to federal aid highways if the sign will comply with the requirements of § 84.30(4), Stats. The Department does not allege that the proposed sign will not comply with the requirements of § 84.30(4), Stats. The only issue to be decided is whether the proposed location for subject sign is a business area. For reasons set forth below Hillside Greenhouse is an agricultural activity within the exception for "commercial and industrial activities" set forth at § 84.30(2)(d), Stats. Accordingly, the proposed site does not constitute a "business area" as that term is defined at § 84.30(2)(b), Stats., and is, therefore, not an eligible site for an off-premise outdoor advertising sign.

### Applicable Statutes

Section 84.30(3), Stats., provides in relevant part:

No sign visible from the main-traveled way of any interstate or federal-aid highway may be erected or maintained, except the following:

. . . . .

(e) Signs to be erected in business areas subsequent to March 18, 1972 which when erected will comply with sub. (4).

Section 84.30(2), Stats., sets forth the following definitions:

(b) "Business area" means any part of an adjacent area which is zoned for business, industrial or commercial activities under the authority of the laws of this state; or not zoned, but which constitutes an unzoned commercial or industrial area as defined in par.

(k). In adjacent areas along the interstate system business areas shall be limited to commercial or industrial zones within the boundaries of incorporated municipalities, as those boundaries existed on September 1, 1959, and all other areas where the land-use as of September 1, 1959, was clearly established by state law as industrial or commercial.

(d) "Commercial or industrial activities" for purposes of unzoned industrial and commercial areas mean those activities generally recognized as commercial or industrial by local zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

. . . . .

2. Agricultural, forestry, ranching, grazing, farming and similar activities, including, but not limited to wayside fresh produce stands.

(k) "Unzoned commercial or industrial areas" mean those areas which are not zoned by state or local law, regulation or ordinance, and on which there is located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is actually conducted whether or not a permanent structure is located thereon, and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Each side of the highway will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing and landscaped areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge or pavement of the highway.

## DISCUSSION

The sole issue that needs to be decided in this matter is whether the presence of the greenhouse business on the property qualifies the subject site as an unzoned commercial area. The Department does not argue that the greenhouse is not a business, but rather that pursuant to § 84.30(2)(d)2., Stats., it is an agricultural activity that is expressly excluded from the definition of “commercial or industrial activities.” Section 84.30(2)(d)2., Stats., excludes “[a]gricultural, forestry, ranching, grazing, farming and similar activities, including, but not limited to wayside fresh produce stands.” Roger Larson testified that in permitting outdoor advertising signs he has considered greenhouse businesses commercial activities when they have sold products other than flowers, such as greeting cards, candles, and knick-knacks. During a visit to the Hillside Greenhouse, Mr. Larson was told by one of the owners of the business that it sold only items that they grew themselves.

The word “agriculture” is defined as follows:

a: the science or art of cultivating the soil, harvesting crops, and the raising of livestock.  
. . . b: the science or art of the production of plants and animals useful to man and in varying degrees the preparation of these products for man’s use and their disposal (as by marketing). (emphasis added)

Webster’s Third New International Dictionary

Based on this definition, Hillside Greenhouse is an agricultural activity and its presence does not qualify the area as an “unzoned commercial or industrial area.”

## CONCLUSIONS OF LAW

The Administrator concludes:

1. The site where the proposed sign is to be located does not constitute an unzoned commercial area within the definition of business area at § 84.30(2)(b), Stats. Pursuant to § 84.30(3)(e), Stats., the site is not eligible for a permit for an off-premise outdoor advertising sign.
2. Pursuant to §§ 84.30(18) and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

ORDER

The Administrator orders:

The Department of Transportation's denial of the application for an off-premise outdoor advertising sign permit filed by Roddy's Signs, Inc., d/b/a American Signs and Designs, is  
**AFFIRMED.**

Dated at Madison, Wisconsin on January 17, 2001.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_  
David H. Schwarz  
Administrator

## **NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with § 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to § 227.49, Stats. Rehearing may only be granted for those reasons set out in § 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under §§ 227.52 and 227.53, Stats.
  
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of §§ 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of §§ 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.